



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 06, 2022

IN THE MATTER OF:

Appeal Board No. 624857

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 624856 and 624857, the claimant appeals from the decisions of the Administrative Law Judge filed July 15, 2022, which sustained the initial determinations holding, effective August 23, 2021, that the wages paid to the claimant, a professional employee of an educational institution, cannot be used to establish a valid original claim during the period between two successive academic terms, on the basis that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (10); charging the claimant with an

overpayment of \$1,256 in benefits recoverable pursuant to Labor Law § 597 (4);

and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$300 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020.

In Appeal Board No. 6248585, an appeal was processed to the Board of the decision of the Administrative Law Judge, filed July 15, 2022, which overruled that the initial determination reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$188.40 on the basis that the claimant made willful misrepresentations. It now appears that the appeal was processed through inadvertence. Since the Judge's decision is not adverse to the appellant's interest, the appellant has no standing to appeal from that decision.

The Administrative Law Judge held telephone conference hearings at which testimony was taken. There were appearances by the claimant and on behalf of

the employer.

In Appeal Board Nos. 624856 and 624857, our review of the record reveals that the case should be remanded to hold a hearing. Although two hearings have been held, there has been no confrontation between the parties. On appeal, the claimant has contended that she did not receive notice of the hearing held on July 14, 2022, and the Board deems it appropriate to remand the case for confrontation.

The parties are to arrange with the hearing section to read the transcripts of the hearings held on May 31, 2022 and July 14, 2022 prior to the remanded hearing. The employer is directed to produce Edward Clinton as a witness, and the employer and the claimant shall each be afforded an opportunity to cross-examine the other on the testimony previously given in this matter. The claimant shall be confronted with and afforded an opportunity to comment on the documents entered into evidence at the July 14, 2022 hearing. Additionally, the parties may produce any other relevant witnesses or documents. The Administrative Law Judge shall take any other testimony or evidence necessary to decide the issues.

Now, based on all of the foregoing, it is

ORDERED, that in Appeal Board Nos. 624856 and 624857, the decisions of the Administrative Law Judge, insofar as they sustained the initial determinations, are rescinded; and it is further

ORDERED, that in Appeal Board Nos. 624856 and 624857, the cases shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law; and, it is further

ORDERED, that Appeal Board No. 624858 is dismissed, and the Judge's decision is continued in effect.

JUNE F. O'NEILL, MEMBER